

CV 02-01232 #00000009

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY  
BY  
CC: TO JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOEL HODGELL,

Plaintiff,

v

RICHARD GOLDRING, GO  
ENTERTAINMENT INC, INTERNET  
ADVISORY CORPORATION (IACP),  
SCORES USA INC, GO WEST  
ENTERTAINMENT INC, 3W  
CORPORATION, DATAPEER INC, &  
"JOHN DOE" SPAMMERS,

Defendants

NO. CV02-1232Z

PRAECIPE RE.  
NOTICE OF REMOVAL

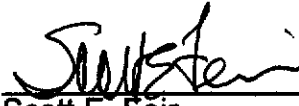
(Clerk's Action Required)

TO CLERK OF THE COURT

The accompanying Exhibits A & B were referenced in DataPeer, Inc.'s (f/k/a 3W Corporation) Notice of Removal filed with this Court on June 10, 2002 Exhibits A & B, however, may have been inadvertently omitted Please attach the accompanying Exhibits A & B to the Notice of Removal

DATED this 12 day of June, 2002, at Seattle, Washington.

MONTGOMERY PURDUE BLANKINSHIP  
& AUSTIN, PLLC

By   
Scott E Feir  
WA State Bar No 28192  
Attorneys for Defendant DataPeer, Inc

PRAECIPE RE  
NOTICE OF REMOVAL - 1

sefic use/mreg/datapeer/datapeer removal (diversity)/praecipe re notice of removal doc

MONTGOMERY PURDUE BLANKINSHIP & AUSTIN PLLC  
ATTORNEYS AT LAW  
5800 BANK OF AMERICA TOWER  
701 FIFTH AVENUE  
SEATTLE, WA 98104-7096  
(206) 682-7090 TEL., (206) 625-9534 FAX

ORIGINAL

9

**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am, and at all times herein mentioned have been, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-mentioned action, and competent to be a witness herein

On the date given below, I caused to be served in the manner noted a copy of the foregoing document on the person below

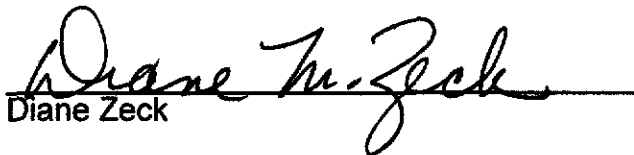
Joel Hodgell,  
12712 Lake City Way NE 3  
Seattle, WA 98125

☐ Via Facsimile

☒ Via Mail

☐ Via Messenger

DATED this 12<sup>th</sup> day of June, 2002 at Seattle, Washington

  
Diane Zeck

PRAECIPE RE

NOTICE OF REMOVAL - 2

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**MONTGOMERY PURDUE BLANKINSHIP & AUSTIN PLLC**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE COUNTY OF KING

JOEL HODGELL,  
Plaintiff

No. -

SUMMONS (60 Days)

v.

RICHARD GOLDRING,  
GO ENTERTAINMENT INC.,  
INTERNET ADVISORY  
CORPORATION (IACP),  
SCORES USA INC.,  
GO WEST ENTERTAINMENT INC.,  
3W CORPORATION,  
DATAPEER INC., &  
"JOHN DOE" SPAMMERS,  
Defendants

TO THE DEFENDANTS: A lawsuit has been started against you in the above entitled court by JOEL HODGELL, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 60 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the State of Washington.



JOEL HODGELL  
Plaintiff

Dated:

15 April 2002

12712 Lake City Way NE 3  
Seattle, WA 98125  
(206) 562-2166  
hodgell\_v\_goldring@hocomail.com

COMPLAINT FOR INJUNCTIVE AND  
ADDITIONAL RELIEF  
HODGELL V. GOLDRING, ET AL

Page 1 of 9

15 APRIL 2002

EXHIBIT A

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5 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
6 **IN AND FOR THE COUNTY OF KING**

7 **JOEL HODGELL,**

8 **Plaintiff,**

9 **v.**

10 **RICHARD GOLDRING,**  
11 **GO ENTERTAINMENT INC.,**  
12 **INTERNET ADVISORY CORP. (IACP),**  
13 **SCORES USA INC.,**  
14 **GO WEST ENTERTAINMENT INC.,**  
15 **3W CORPORATION, DATAPEER INC., &**  
16 **\*JOHN DOE\* SPAMMERS,**

17 **Defendants.**

18 **NO.**

19 **COMPLAINT FOR INJUNCTIVE AND**  
20 **ADDITIONAL RELIEF UNDER THE**  
21 **UNFAIR BUSINESS PRACTICES—**  
22 **CONSUMER PROTECTION ACT AND**  
23 **THE COMMERCIAL ELECTRONIC MAIL**  
24 **ACT**

25 **COMES NOW, plaintiff, Joel Hodgell, and brings this action against defendants named herein. The**  
26 **plaintiff alleges the following on information and belief:**

1 **I. JURISDICTION AND VENUE**

2 **1.1. This is an action to recover damages and penalties for defendants' repeated violations of the**  
3 **Washington State Commercial Electronic Mail Act, RCW 19.190 et seq., the Washington State Consumer**  
4 **Protection Act, RCW 19.86 et seq., and under the common law tort of trespass to channels.**

5 **1.2. This Complaint is filed and these proceedings are instituted under the provisions of RCW 19.190,**  
6 **the Commercial Electronic Mail Act, and RCW 19.86, the Unfair Business Practices—Consumer Protection Act, and**  
7 **under common law tort of trespass to channels, and RCW 9.68, the Obscenity and Pornography Act.**

8 **1.3. Jurisdiction of the plaintiff and Attorney General to commence this action is conferred by RCW**  
9 **19.86.020, 19.86.090, 19.86.160, RCW 19.190.030 and RCW 4.12.020 and 4.12.025.**

10 **1.4. The violations alleged herein have been and are being committed in whole or in part in King**  
11 **County, in the State of Washington by defendants named herein, therefore, venue is proper in this court.**

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**II. PLAINTIFF & DEFENDANTS**

3.1. Plaintiff Joel Hodgell, is a resident of the state of Washington and of the county of King, an adult over the age of eighteen years, is located at 12712 Lake City Way NE 3, Seattle, WA 98125, and is sui juris.

3.2. Defendant Richard Goldring is the Chief Executive Officer of Internet Advisory Corporation, Go Entertainment Inc., Scores USA Inc. and Go West Entertainment Inc. and the corporate office for these defendant companies are located at 150 East 58<sup>th</sup> Street, Suite 2504, New York, NY 10155. Go Entertainment Inc. is also located at 3380 Veteran's Memorial Hwy, Suite D, Bohemia, NY 11716. Defendant companies 3W Corp. and Datapeer Inc. are both located at 2113 Linwood Ave., 5<sup>th</sup> Floor, Fort Lee, NJ 07024.

3.3. Defendants, doing business as Internet Advisory Corporation (IACP), Go Entertainment Inc., Scores USA Inc. and Go West Entertainment Inc., conducts business in Washington through unsolicited commercial email ("spam") sent over the Internet to Washington residents, to promote their pornographic websites. Defendants 3W Corp. and Datapeer Inc. provide website hosting services for the pornographic websites promoted by the other defendants' spamming, done by Go Entertainment themselves or by "John Doe" spammers. 3W Corp. and Datapeer Inc. have known for at least four months about the spamming being done to promote the other defendants' websites located at Internet Protocol (IP) numbers 216.129.174.00 through 216.129.175.255, but have failed to enforce their own Acceptable Use Policy, and therefore, are clearly "assisting" the other defendants in their spamming activities.

**III. NATURE OF TRADE OR COMMERCE**

3.1. Since at least 2 December 2001, defendants have sent, assisted, and conspired with others to send unsolicited commercial electronic mail via the Internet to the plaintiff and other residents of Washington State.

3.2. Said messages were not "an electronic mail message to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account, when the sender has agreed to such an arrangement" (RCW 19.190.010(2)). Said messages were not sent by Scorescash.com affiliates. The defendants have a long history of spamming as found at SPEWS, "Spam Prevention Early Warning System", at <http://www.spews.org/html/S962.html> and as found at the Usenet group [news.admin.net-abuse.email](mailto:news.admin.net-abuse.email).

1 3.3. Defendants know or have reason to know that they send spam to Washington State residents. All  
2 of the plaintiff's email addresses that were spammed by the defendants are registered at <http://registry.waasp.org> and  
3 the plaintiff's residency status information for his email addresses is available upon request from the registrant of the  
4 Internet domain names found in his email addresses.

5 3.4. Defendants are in competition with others in the State of Washington engaged in similar business  
6

7 **IV. FIRST CAUSE OF ACTION - VIOLATIONS OF RCW 19.190**

8 **COUNTS 1 - 208**

9 4.1. Plaintiff recites Paragraphs 3.1 through 3.4 and incorporates them herein as if set forth in full

10 4.2. Email messages sent via the Internet contain a header, which tells the recipient the source of the  
11 original message, as well as any points of transmission on the message's path to the eventual recipient. A typical  
12 header will show the path of computers that sent the email message to the ultimate recipient. The specific  
13 computers are identified by a series of computer and domain names, and Internet protocol numbers. Often there are  
14 several computers involved in transmitting the message to its final destination. By examining the names and  
15 numbers which identify each computer along the transmission path, it is possible to determine who originally sent  
16 the message, and which Internet service providers transmitted it to its ultimate recipient.

17 4.3. It is also possible for a sender to disguise or obscure the true routing of an email message by  
18 manipulating the transmission path information in the message's header. The defendants engage in this practice.  
19 They manipulated the information in their messages' headers to reflect that their spam originated at computers that  
20 are different from theirs. Since 2 December 2001, defendants have sent at least 208 unique and distinct spams to the  
21 plaintiff. About ninety percent of these spams used the Internet domain name "yahoo.com" in the "from" address.  
22 In fact, "yahoo.com" is a domain name assigned to Yahoo! Inc., not the defendants, and was used without the  
23 owner's permission. Yahoo.com forbids the use of their domain name for any spamming purposes. Defendants'  
24 messages did not originate from the "yahoo.com" domain; no yahoo.com IP members were in the defendants' spam  
25 headers. Accordingly, defendants misrepresented the transmission path of their email messages by obscuring their  
26

1 true point of origin, used the third party Internet domain name yahoo.com without the owner's permission, and  
2 clearly violated RCW 19.190.020(1)(a).

3 4.4 In about ten percent of the defendants' spams, they used a third party's Internet domain name  
4 without permission of the third party in the "from" email address field. The third party Internet domain names  
5 forum.dk, nro.fi, tnt.tnt.it, newmail.ru, hotpop.com, ru.ru, mailandnews.com, fun.21cn.com, tie.it, ok.ru, smad21.com, psalm.fi,  
6 hotmail.com, 24hours.com, mocom.net, postaweb.com, lobex.fi, kismetall.com, radeswan.de, minuscule.net, were used without the  
7 permission of the third party. Clearly, the defendants do not own these third party Internet domain names and used  
8 them without their owner's permission, and clearly violated RCW 19.190.020(1)(a).

9 4.5 The defendants used non-existent, invalid, non-working "from" addresses in their spams. Reply  
10 messages sent to their "from" address were "bounced" back to the plaintiff and designated "undeliverable" or "user  
11 unknown". The reply messages were undeliverable because the defendants used "from" or return email addresses  
12 that were invalid or non-existent at the time of transmission or by the time the plaintiff attempted to respond. The  
13 "from" or return address is rendered invalid either because (1) the return electronic mail address was invalid or non-  
14 existent at the time of transmission and/or thereafter, or (2) the Internet service provider who provided defendants'  
15 email account immediately canceled it upon discovering it was being used to send unsolicited bulk email without the  
16 service provider's approval or (3) the vast number of instant replies in response to defendants' messages overloaded  
the capacity of the return email address to receive more messages and resulted in the account's eventual shutdown.  
Washington State law requires that a sender of unsolicited commercial electronic mail truthfully identify the  
originating electronic mail address of the transmission, RCW 19.190.020(1)(a). By posting a seemingly valid return  
email address that, in fact, is impossible to respond to, defendants misrepresented the status and/or existence of their  
email account.

22 4.6 In at least ninety percent of the defendants' spams sent to the plaintiff, the "to" email address field  
23 was completely deleted, and thus totally obscured. Defendants obscured information in identifying the transmission  
24 path of their commercial electronic mail message, and clearly violated RCW 19.190.020(1)(a)

1           4.7.     The defendants also used third party Internet domain name Hotmail.com without their permission  
2 in the "to" field, which is part of the transmission path. Hotmail.com is supported by paid advertisements, and not  
3 by the unpaid, unrequested, unpermitted, and misleading commercial email messages from the defendants. Clearly,  
4 this is an unfair method of competition and unfair or deceptive act or practice in the conduct of any trade or  
5 commerce, has been declared unlawful by the Washington State legislature, as used by the defendants.

6           4.8.     The defendants' spams were not sent by any Go-Ent.com or Scorescash.com affiliates. All of the  
7 defendants' spams promoted simple hyperlink websites, such as <http://216.129.174.24>, <http://216.129.175.8>, or  
8 <http://216.129.175.84>, all owned/operated by defendant Go Entertainment. Go-Ent.com or Scorescash.com affiliates  
9 use hyperlinks, such as [http://www.OUR\\_SITE.com/applet/PIN\\_CODE](http://www.OUR_SITE.com/applet/PIN_CODE) as found at the defendants' own  
10 Scorescash.com website. Clearly, the defendants' own the websites promoted in their spams, Go-Ent.com and  
11 Scorescash.com affiliates were not promoting these websites, and the defendants have violated RCW 19.190.

12           4.9.     It is a violation of RCW 19.190.020(1)(a) and 19.190.030(1)(a) to initiate the transmission,  
13 conspire with another to initiate the transmission, or assist the transmission, of a commercial electronic mail  
14 message from a computer located in Washington or to an electronic mail address that the sender knows, or has  
15 reason to know, is held by a Washington resident that uses a third party's internet domain name without permission  
16 of the third party, or otherwise misrepresents or obscures any information in identifying the point of origin or the  
17 transmission path of a commercial electronic mail message. Pursuant to RCW 19.190.020(1)(a), each Count, One  
18 through Two Hundred Eight, in this First Cause of Action is a separate and distinct violation of RCW 19.190, and  
19 pursuant to RCW 19.190.030(1)(a), (2), and (3) constitutes a separate and distinct violation of the Consumer  
20 Protection Act, RCW 19.26. As a proximate result of defendants' conduct, each and every Count, One through Two  
21 Hundred Eight, in this First Cause of Action has damaged plaintiff in his property.

22  
23                   **V. SECOND CAUSE OF ACTION - VIOLATIONS OF RCW 19.26**

24           5.1.     Plaintiff realleges Paragraphs 3.1 through 4.9 and Counts One through Two Hundred Eight of the  
25 First Cause of Action and incorporates them herein as if set forth in full.  
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1           5.2. Each of Counts One through Two Hundred Eight of the First Cause of Action also constitutes a  
2 separate and distinct act of an unfair method of competition and unfair or deceptive act or practice in the conduct of  
3 any trade or commerce, has been declared unlawful, and violates RCW 19.86 (RCW 19.86.020, et seq.), the  
4 Washington Consumer Protection Act. As a proximate result of defendants' conduct, each and every Count in this  
5 Second Cause of Action has damaged plaintiff in his property.  
6

7                           **VI. THIRD CAUSE OF ACTION - TRESPASSES TO CHATTELS**  
8

9           6.1. Plaintiff realleges Paragraphs 3.1 through 5.2 and Counts One through Two Hundred Eight of the  
10 First Cause of Action and incorporates them herein as if set forth in full.  
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12           6.2. Each of Counts One through Two Hundred Eight of the First Cause of Action also constitutes a  
13 separate and distinct trespass to chattels onto the personal property of plaintiff.  
14

15           6.3. As a proximate result of defendants' conduct in each and every Count in the First and Second  
16 Cause of Action, plaintiff has experienced loss of use, loss of value, and additional work and expenses relating to his  
17 computer equipment and Internet service.  
18

19                           **VII. FOURTH CAUSE OF ACTION - VIOLATIONS OF RCW 9.68**  
20

21           7.1. Plaintiff realleges Paragraphs 3.1 through 6.3 and Counts One through Two Hundred Eight of the  
22 First Cause of Action and incorporates them herein as if set forth in full.  
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24           7.2. Each of Counts One through Two Hundred Eight of the First Cause of Action are also separate  
25 and distinct violations of RCW 9.68, the Obscenity and Pornography Act. The defendants sent their unsolicited  
26 pornographic spam to recipients regardless of their age. Clearly, the defendants have acted irresponsibly in  
promoting their pornographic services. As a proximate result of defendants' conduct, each and every Count in this  
Second Cause of Action has damaged plaintiff in his property.

**VII. PRAYER FOR RELIEF**

**WHEREFORE, plaintiff, JOEL HODGELL, prays for relief as follows:**

**8.1. That the Court adjudge and decree that defendants have engaged in the conduct complained of herein.**

**8.2. That the Court adjudge and decree that the conduct complained of in Sections III - VII constitutes violations of the Commercial Electronic Mail Act, RCW 19.190, and pursuant to RCW 19.190.030(2) and (3) constitutes separate and distinct violations of the Consumer Protection Act, RCW 19.86.**

**8.3. That the Court adjudge and decree that the conduct complained of in Sections III - VII constitutes an unfair method of competition and unfair or deceptive act or practice in the conduct of any trade or commerce in violation of the Consumer Protection Act, RCW 19.86.**

**8.4. That the Court adjudge and decree that the conduct complained of in Sections III - VII constitutes violations of the Obscenity and Pornography Act, RCW 9.68.**

**8.5. That the Court issue a permanent injunction enjoining and restraining defendants and their representatives, successors, assigns, officers, agents, servants, employees, and all other persons acting or claiming to act for, on behalf of, or in active concert or participation with defendants from continuing or engaging in the unlawful conduct complained of herein.**

**8.6. That for the First Cause of Action the Court assess statutory damages of US\$500.00 for each Count One through Two Hundred Eight, for each and every, separate and distinct violation of RCW 19.190 (RCW 19.190.040(1)), equal to US\$104,000.00, to be paid by the defendants to the plaintiff, and**

**8.7. That for the Second Cause of Action the Court assess treble damages and costs pursuant to RCW 19.86.090 of US\$1,000.00 for each Count One through Two Hundred Eight, for each and every, separate and distinct violation of RCW 19.86.020, equal to US\$208,000.00, to be paid by the defendants to the plaintiff, and**

**8.8. That for the Second and Fourth Cause of Action the Court assess civil penalties pursuant to RCW 19.86.140, of two thousand dollars (US\$2,000) for each Count One through Two Hundred Eight, for each and every, separate and distinct violation of RCW 19.86.020 and RCW 9.68 caused by the conduct complained of herein, equal to US\$416,000.00, to be paid by the defendants to the plaintiff and/or State of Washington, and**

1        8.9.     That for the Third Cause of Action for each Count One through Two Hundred Eight, the Court  
2 assess an award of damages in an amount to be set at trial, and

3        8.10.    Filing and service fees, estimated to be USD\$800.00, and

4        8.11.    Additional costs and fees associated with the enforcement of judgment rendered herein, and

5        8.12.    Post judgment compounded interest of twelve percent per annum (12%), one percent per month  
6 (1%), and

7        8.13.    That the Court decree such orders pursuant to RCW 19.86.080 to provide that plaintiff, State of  
8 Washington, have and recover from defendants the costs of this action, including reasonable attorney's fees.

9        8.14.    That the Court order such other relief as it may deem just and proper to fully and effectively dissipate  
10 the effects of the conduct complained of herein, or which may otherwise seem proper to the Court.

11  
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13        DATED this 15<sup>th</sup> day of April 2002.

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Joel Hodgell  
Plaintiff